

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Steve Klein,**  
Appellant,

**v.**

**Polk County Board of Review,**  
Appellee.

**ORDER**

**Docket No. 13-77-0706**  
**Parcel No. 211/00120-000-000**

On May 2, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Steve Klein was self-represented. The Board of Review was represented by Assistant County Attorney Ralph Marasco, Jr. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Steve Klein appeals from the Polk County Board of Review decision reassessing his property located at 352 NW Main Street, Elkhart, Iowa. According to the property record card, the property consists of a one-story, commercial building with 2400 square feet of finished area, and a 720 square-foot, fenced patio with 168 square-feet under cover. The building was built in 1921, and remodeled in 2008 and 2011. It is listed as below-average construction quality (Grade 5+00) and is in above-normal condition. The property does business as Elkhart Pub and is situated on a 0.80-acre site.

The real estate was classified as commercial on the initial assessment of January 1, 2013, and valued at \$95,500, representing \$4000 in land value and \$91,500 in improvement value.

Klein protested to the Board of Review on the grounds that the assessment is not equitable as compared to like properties in the taxing jurisdiction and that the property was assessed for more than authorized by law under Iowa Code sections 441.37(1)(a)(1) and (2). Klein also restated his over-

assessment claim in several other sections of his petition. He requested an assessed value of \$64,000. The Board of Review denied the petition.

Klein appealed to this Board reasserting his claims and sought the same relief.

Klein and a partner purchased the property in 2007. He paid \$14,500 for his share of ownership. In 2011, he bought out his partner for an additional \$16,000. Klein estimated he has \$40,000 to \$50,000 in the property considering the remodeling, kitchen addition, converting the storage/hallway area, and adding the partially fenced, covered patio area. He provided photographs of the hallway and patio area and estimated that he spent roughly \$12,000 for renovations since 2011. He did not explain if his estimates included labor or just materials.

Klein identified three other commercial properties in Elkhart as equity comparables. These properties were assessed from \$85,500 to \$195,000. None of the properties has recently sold and the record lacks the necessary data to complete an assessment/sales ratio analysis. It is not sufficient to merely compare the assessed values of identified properties. For this reason, we give this evidence no consideration.

Klein testified the subject property is listed for \$265,000 and the highest offer he has received was for \$100,000. He accounts for the \$200,000 difference between his asking price and his value estimates as the business and equipment value. The certified record included a listing sheet from Ruhl & Ruhl Commercial showing the property is being marketed as 3120 square feet (2400 square-foot bar and 720 square-foot patio area) free-standing, historic building and that the \$265,000 price included furniture, fixtures, and equipment.

Mike Caulfield, a commercial appraiser with the Polk County Assessor's office, testified on behalf of the Board of Review. He inspected the property in 2010 and 2012. He testified that his 2012 inspection showed that a portion of the property that had previously been listed as an attached garage was converted to bar space. In addition, a fenced and partially-covered smoker's patio was added.

Caulfield completed all three approaches to value the property. He estimated the value by the cost approach arriving at a value of \$147,000. Caulfield identified six 2011-2012 sales ranging from \$45,000 to \$149,000, or \$27.23 to \$56.05 per-square-foot. He adjusted the sales for age, size, land-to-building ratio, construction quality, and other differences. Adjusted prices were \$77,832 to \$114,864, or \$32.43 to \$47.86. The sales approach indicated a value of \$96,300. Caulfield's estimated value by the income approach was \$86,260, using a market rent of \$6.50 per-square-foot, a net operating income of \$12,100, and a 10% capitalization rate. We find Caulfield's evidence to be the best evidence in the record.

### ***Conclusion of Law***

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(a)(2). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If

sales are not available to determine market value then “other factors,” such as income and/or cost, may be considered. § 441.21(2). The property’s assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

*Id.* at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

While Klein provided three properties he considered comparable to his, none of the properties sold recently. Therefore, the record lacks the information necessary to complete an assessment/sales ratio analysis under the *Maxwell* test. Further, Klein did not allege the Assessor applied an assessment method in a non-uniform way under the *Eagle Foods* test. Thus, he did not show his property was inequitably assessed under either test.


In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the

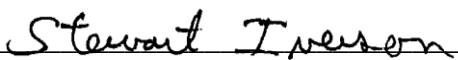
subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

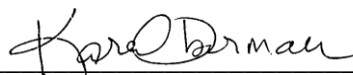
Klein did not provide evidence to support his claim of over-assessment as of the January 1, 2013, assessment date. While he believes the subject property has a value of \$64,000, it is listed for sale at \$265,000. This far exceeds his value opinion, even allowing for furniture, fixtures, equipment, and business value. The record lacked other evidence of the fair market value of the subject property, such as recent comparable sales, an appraisal, or an income or cost approach to valuation. As a result, we find the preponderance of the evidence fails to support Klein's claim that his property was assessed for more than authorized by law as of January 1, 2013.

THE APPEAL BOARD ORDERS the January 1, 2013, property assessment of Klein's property located at 352 NW Main Street, Elkhart, Iowa, of \$95,500 is affirmed.

Dated this 22nd day of May, 2014.

  
Jacqueline Rypma, Presiding Officer

  
Stewart Iverson, Board Chair

  
Karen Oberman, Board Member

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